

(1978) 11 DEL CK 0014

In the Delhi High Court

Case No : I.A. No. 1959 of 1978 in Suit No. 314 of 1978

Widramac Sales (P) Ltd., New Delhi

APPELLANT

Vs

J.E.C. Cabmac (P) Ltd., New Delhi and Another

RESPONDENT

Date of Decision : 10-11-1978

Acts Referred:

Citation : AIR 1979 Delhi 138

Hon'ble Judges : Prithvi Raj, J

Bench : Single Bench

Advocate : D. K. Aggarwal, for the Appellant; K.N. Bhat, M.L. Verma and Vijay Gupta, for the Respondent

Judgement

1. The defendant (Mls. Jec Cabmac (P) Ltd.) by, this application filed under Order V11 Rules 10 and 11 read with Section 151 of the Civil P. C. contends that the plaintiff having fixed the value of the relief claimed by it in the suit . at Rs. 200/-, the plaint is liable to be returned to the plaintiff to be presented to the court having jurisdiction to entertain a claim of Rupees 200/- as the value for the purpose of jurisdiction u/s 8 of the Suits Valuation Act has to be the same. It is further contended that it is not permissible to state different values of the suit claims for different purposes and that no plaintiff has a right to choose a court "to which he is not entitled under law". Besides, it is alleged that the value arrived at by the plaintiff is-not in consonance with Order Vii, Rule 2 which requires the plaintiff td state approximately the amount or value sued for after the exercise of reasonable diligence.

2. The plaintiff traversing the contentions of the defendant submits that It had correctly and "fully complied with the provisions of Order Vii Rule 2; that it had correctly valued the suit and that this Court has jurisdiction to hear the suit. The plaintiff further submits that the application is misconceived and that the defendant ought to have filed written statement.

3. In order to determine the controversy between the parties as to whether the

suit is triable by this Court or not, it would be relevant to note the brief facts of the case. The plaintiff's case is that defendant No. 2 Shri K. Jayaraman before floating the defendant company was acting as general manager of a public limited company known as Promain Limited, New Delhi. The said Company was manufacturing machinery for wire and cable industry. The plaintiff-company had been acting as sole selling agents of M/s. Promain Limited. The said sole selling agency of the plaintiff Company was concluded with effect from April, 1973. The plaintiff alleges that on the service of defendant No. 2 coming to an end with M/s. Promain Limited in or about Aug. 1973, he set up a firm in the name and style of Jayar Engineers and Consultants. Subsequently, the said defendant along with his wife, relatives and friends floated defendant No. 1 company and commenced the business of manufacturing machinery for the wire and cable industries. According to the plaintiff, while acting as sole selling agents of M/s. Promain Ltd. it had earned for itself a reputation in the wire and cable industry in the country and even after the conclusion of its sole selling agency of M/s. Promain Limited, it continued to receive enquiries for equipment required by the wire and cable industry from various factories all over India and abroad. The case of the plaintiff is that when the defendants commenced manufacturing machinery for wire and cable industry they requested it to assist them and take over the work of pushing the sale of the equipments manufactured by the defendants who agreed to pay a commission of 5 per cent on the value of the orders through it or through its introductory efforts.

4. The plaintiff submits that it rendered services to the defendants as desired and that according to its estimation the defendant succeeded in selling machinery and equipment of an amount of about rupees forty lakhs through its efforts. The plaintiff accordingly submits that it became entitled to a commission of 5 percent on the order value of the machinery and equipments thus sold by the defendants.

5. The grievance of the plaintiff is that despite a large sum of money due to it on account of commission, M/s. its repeated demands for rendering accounts so that commission due to it may be ascertained and paid, defendants sent an undated statement of account full of inaccuracies which the plaintiff received on or about 5th September, 1976. The plaintiff submits that by its letter dated 17th September, 1976 it pointed out the inaccuracies in the statement of accounts stating that according to the agreement it was to be paid commission at the rate of 5 per cent of the order value of each machine, but it was not so calculated in case of some transactions while some transactions were left out of consideration altogether. The plaintiff avers that it required the defendants to render true and correct accounts but, the defendants had failed to render the true and correct accounts to the plaintiff and have further failed to pay the commission due to it. The plaintiff in the premises contends that the defendants are the accounting party and have received the amounts of the sale price of the machineries and equipment from different purchasers. The plaintiff accordingly seeks a preliminary decree against the defendants, directing them to render accounts to

it and further pray that on accounts being taken a final decree be passed against the defendants and in favor of -the plaintiffs for the amount that may be found due from the defendants to it.

6. The plaintiff for the purposes of court-fee tentatively fixed the value of the relief sought by it at rupees 200/and paid court-fee of Rs. 20/- but for the purposes of jurisdiction the suit was valued at Rs. 65,000/-,

7. The defendants, as already noted above, by this application challenge the valuation put by the plaintiff on its relief sought for the purposes of court fee and jurisdiction.

8. The learned counsel for the defendants strongly urged that the plaintiff having chosen. to fix the value of he relief sought by it for the purposes of court-fees at Rs. 200/- in accordance with the provisions of Section 7(iv)(f) of the Court-fees Act 1870, the same valuation has also to be taken to be the valuation for the purposes of jurisdiction u/s 8 of (The) Suits Valuation Act, 1887, as under the said section where in suits other than those referred to in Court-fees Act, 1870, Section 7, paras V, Vi and Ix, and para. X, clause (d) court-fees are payable ad valorem un6r the Court-fees Act, 1870, the value as determinable for computation of Court-fees and the value for purposes of jurisdiction shall be the same. There can be no dispute to this proposition of law. Indeed their Lordships in S.Rm.Ar.S.Sp. Sathappa Chettiar Vs. S.Rm.Ar.Rm. Ramanathan Chettiar, , have observed that if the scheme laid down for the computation of fees payable in suits covered by several sub-sections of Section 7 of the Court-fees Act, 1870, is considered, it would be clear, that in suits falling under sub-section (iv) a departure has been made and liberty has been given to the plaintiff to value his claim for the purposes of Court fee, The theoretical basis for this provision appears to be that in cases in which the plaintiff is given the option to value his claim, it is really difficult to value the claim with any precision or definiteness. Further, so far as suits falling u/s 7, sub-section (iv) of the Act, are concerned, Section 8 of the Suits Valuation Act provides that the value as determinable for the computation of court-fees and the value for the purposes of jurisdiction shall be the same. There can be little doubt that the effect of the provisions of Section 8 is to make the value for the purposes of jurisdiction dependent upon the value as determinable for computation of court-fees and that is natural enough once the plaintiff exercises his option and values his claim for the purposes of court-fees, that determines the value for jurisdiction. The result is that it is the amount at which the plaintiff has valued the relief sought for the purposes of court-fees that determines the value for jurisdiction in the suit and not vice versa.

9. The learned counsel appearing for the plaintiff, however, contended that the High Court of judicature at Lahore had framed rules under S. 9 of the Suits Valuation Act, -1887, with regard to the manner and determination of the value of certain types of suits for the twin purposes of court-fees and jurisdiction and that the said rules are applicable in the High -Court of Delhi by virtue of Section 7 of the Delhi High Court Act, 1966, and that the valuation placed by the plaintiff

with regard to the jurisdiction was in consonance with the said rules. That being so, the suit, it was urged, is triable by this Court. The learned counsel for the defendants contested the correctness of this assertion. The question accordingly is whether the rules framed by the High Court of Judicature at Lahore are applicable in the High Court of Delhi or not,

10. In order to determine the respective contention of the parties, it would be appropriate to note the relevant provisions of the Suits Valuation Act and the rules made there under by the High Court of Judicature at Lahore.

11. Section 9 of the Suits Valuation Act, 1887, reads at under:-

"Determination of value of certain suits by High Court - When the subject-matter of suits of any class, other than suits mentioned in Court-fees Act, Sections 7, paragraphs (v) and (vi), and paragraph (x), clause (d) is such- that in the opinion of the High Court it does not admit of being satisfactorily valued the High Court may, with the previous sanction of the State Government direct that the suits of that class shall, for the purposes of the Court-fees Act, 1870, and of this Act and any other enactment for the time being in force, be treated as if their subject-matter were "of such value as the High Court thinks fit to specify in this behalf"..

12. The High Court of Judicature at Lahore in 1942 with. the previous sanction of the State Government under the powers conferred by Section 9 of the Suits Valuation Act of 1887 and all other powers in that behalf made rules regarding the manner of determining the value of suits for purposes of jurisdiction specified in Section 9 of Suits Valuation Act, 1887. Rules 3 and 4 of the said rules are relevant for our purposes.

12-A. Rule 3 reads as under:-

"Suit in which the plaintiff in the client asks for accounts only not be-

(i) suits to recover the amount which may be found due to the plaintiff on taking unsettled accounts between him and the defendant;

(ii) Suits of either of the kinds described in Order Xx, Rule 13 of Code of Civil Procedure,

value-(a) for the purposes of the Court-fees Act, 1870, - - Rs. 200/-

(b) For the purposes of the Suits Valuation Act, 1887, and the Punjab Courts Act, 1918, - Rs. 1,000/-".

While Rule 4 reads as under:-

4 (i) Suits in which the plaintiff in the plaint seeks to, recover the amount which may be found to the plaintiff on taking unsettled accounts between him and defendant;

(ii) Suits of either of the kind described in Order Xx, Rule 13 of the Code of Civil

Procedure:-

Value for the purposes of court-fees ----- as determined by the Court-fees Act, 1870.

Value for the purposes of jurisdiction for the purposes of the Suits Valuation Act, 1887, and the Punjab Courts Act, 1918, as valued by the plaintiff in the plaint subject to -determination by the Court at any stage of the trial."

13. The learned counsel for the plaintiff submitted that the rules framed 4Y the High Court of Judicature at Lahore and since followed in the said High Court, the East Punjab High Court, the Punjab High Court and in Courts in Delhi even after the constitution of the Delhi High Court pertain to the practice and procedure followed by the said Courts with regard to the manner and determination of the value of certain types of suits for the purposes of court-fees and jurisdiction and that the said practice- and, procedure, with the necessary modifications apply in relation to the High Court of Delhi by virtue of Section 7 of the Delhi High Court Act, 1966. The learned counsel accordingly submitted that the said rules are applicable to all suits triable by this High Court.

14. By virtue of sub-section (2) of Section 5 of the Delhi High Court Act, 1966, notwithstanding anything contain-) ed in any law for the time being in force the High Court of Delhi has in respect of the Union Territory of Delhi ordinary original civil jurisdiction in e , very suit the value of which exceeds twenty five thousand rupees, since raised to fifty thousand rupees by Section 3 of the Delhi High Court (Amendment) Act, 1969, (Act No. - 37 of 1969).

15. Section 7 of the Delhi High Court Act, 1966, deals with the practice and procedure to be followed in the High Court of Delhi. The said section reads as under:-

"Subject to the provisions of this Act, the law in force immediately before the appointed day with respect to practice and procedure in the High Court of Punjab shall, with the necessary modifications, apply in relation to the High Court of Delhi and accordingly the High Court of Delhi shall have all such powers to make rules and orders with respect to practice and procedure as are immediately before the appointed day exercisable by the High Court of Punjab and shall also have powers to make rules and orders with respect to practice and procedure for the exercise of its ordinary original civil jurisdiction".

16. The question accordingly is whether the rules made -by the High Court of Judicature at Lahore - are rules pertaining to practice and procedure with regard to the manner and determination of the value of certain types of suits for the purposes of court-fees and jurisdiction as was sought to be contended by the learned counsel for the plaintiff.

17. The learned counsel for the defendant contended that a matter of practice and procedure generally speaking arises in the course of an action and that practice in its larger sense de notes the mode of proceeding by which a legal

right is enforced as distinguishable from the law which gives the right. He accordingly submitted that the practice" in the common and ordinary sense of the word denotes the rules that guide the *cursus curia* and regulates the proceedings in a cause within the walls of the Court itself while "Procedure" includes the whole course of practice, from the issuing of the first process by which the suitors are brought before the Court to the execution of the last process on the final judgment. In other words, the learned counsel submitted, procedure comprehends all steps necessary to be taken in litigation for the establishment of a right in order that the right may be judicially recognised and declared in such manner as will enable the party asserting the right legally to enjoy it. In the premises, the learned counsel urged that before a party approaches the Court, the party must know the provision of law under which it invokes the pecuniary and territorial jurisdiction of the Court which cannot be a matter of practice and procedure but in statute.

18. Now, what is the meaning- of the words practice and procedure?

19. Patton in his book on Jurisprudence, 3rd Edition at page 535 states that procedure is the body of rules that govern the process of litigation while practice regulates the proceedings in a case within the four walls and limits of the Court itself.

20. In "Words and Phrases" Vol. 33 published by West Publishing Company at page 188 "Practice and Procedure" are said to relate to the legal rules directing the manner of bringing parties into the Court, and the method of the Court after they are brought in, in hearing, dealing with, and disposing of, matters in dispute between them.

21. Jowitt's Dictionary of English Law, Second Edition (page 1400) describes practice as the form and manner of conducting and carrying on suits, actions, or prosecutions at law or in equity, civil or criminal, through their various stages from the commencement to final judgment and execution, according to principles and rules laid down by the several courts. It is further stated at page 1438 that procedure is the mode in which the successive steps in litigation are taken.

22. It is, Therefore, , evident that practice and procedure relate to the body of rules prescribing the method for seeking the remedy and not the enforcement of a right. The object of the Suits Valuation Act. is to prescribe the method of valuing certain suits for the purposes of determining the jurisdiction of Courts with respect thereto. Section 9 of the Suits Valuation deals with that class of suits which do not admit of being satisfactorily valued. The said section provides that in such suits the High Court may provide for the valuation of those suits. The rules framed u/s 9 of the Suits Valuation Act by the High Court of judicature at Lahore provide a mode for valuing the suits for the purposes of jurisdiction in suits which do not admit of being satisfactorily valued. The said rules provide a mode by which a plaintiff is to proceed for the enforcement of his legal rights. If practice and procedure relate to the body of rules directing the manner of

bringing the parties into, Court, it is not understood as to why the rules in question cannot be said to provide a made for bringing the parties into Court.

23. In AIR 1922 Madras 421 , if was observed that the power under which fees were levied on the original side of the High Court was derived from the general powers to issue general rules for regulating the practice and procedure of the Courts. If" that be so, the rules in question cannot be said to be other than the ones for regulating and procedure of the practice Courts.

24. Reference here may be made to Poyser v. Minors (1881) Qbd 329. Therein Lush L. J. observed that practice in its larger sense denotes the mode of proceeding by which a legal right is enforced, as distinguished from the law which gives or defines the right, and which by means of the proceeding the Court is to administer.

25. It may bear mention here, that Poyser's case (supra), was considered in A. G. v, Sillem (1864) 10 HLC. 704 but therein Westbury J. observed that it "practice" means the same thing as procedure and denotes "rules" that make or guide- *cursus curia* and regulate the proceedings in a case within the walls or limits of the Court itself".

26. Sillem (supra) was noticed in Harish Chandra Bajpai Vs. Triloki Singh, . The question under consideration in Harish Chandra's case was whether the provisions of Order 6 Rule 17 of the Civil P. C. were applicable to proceedings before an Election Tribunal. Their Lordships approving the observations of Westbury J. that practice and procedure denotes "rules that make or guide the "*cursus curia* and regulate the proceedings in a case within the walls or limits of the Court itself" observed that these proceedings include all steps, which might be taken in the prosecution or defense thereof, including an application for amendment.

27. But it has to be borne in mind that the observations of their Lordships were made in a wholly different context regarding the applicability of the provisions of Order 6 Rule 17 of the Civil P. C. to a proceeding before an Election Tribunal.

28. The learned counsel for the defendants, however, strenuously contended that the procedure must be in relation to the proceedings in Court after it had taken seisin of the matter and that such -an implication was inherent in the term procedure. Support for this argument was sought from AIR 1972 1935 (SC) . Their Lordships in the above case were interpreting the term procedure appearing in Section 96(1)(b) of the Employees' State Insurance Act 1948. -It was in that context that it was observed that apart from the implications inherent in the term procedure appearing in Section 96(1)(b), the power to prescribe by rules any matter falling within the ambit of the term must be the procedure to be followed in proceedings before such Court." It was further observed that the word in emphasised by-them, furnished a clue to the controversy that procedure must be in relation to proceedings in Court after it had taken seisin of the matter. It would, Therefore, be seen that their Lordships" observations were made only

in the context of Section 96(1)(b) of the Employees' State Insurance Act 1,948.

29. It may be noted here that a Full Bench of this Court in *Smt. Sheila Devi v. Shri Krishan Lal Kalra*, 2nd (19714) 2 Del 491 had an occasion to consider this question. The Full Bench noticed the controversy between the parties regarding these rules but left the question open to be canvassed before the learned Single judge observing that it was not determinative of the questions referred to the Full Bench. However, at page 500, the Full Bench had observed that prima facie the rules are applicable to Delhi. The Full Bench further observed that if there are rules made by any High Court u/s 9 of the Suits Valuation Act, 1887, and the same are applicable, the valuation for the purposes of court fees u/s 7(iv) of the Court fees Act will have to be according to such rules. It was also observed that so far as the rules made by their Punjab High Court are concerned, it has to be noted that Rules 3 and 4 contemplate separate valuation for the purpose of court-fees and for the purposes of jurisdiction. It was further observed that if the said rules are applicable, the valuation for the purposes of court-fees would be separate from the valuation for the purposes of jurisdiction as provided in the said rules.

30. From the observations of the Full Bench it is clear that Rules on a prima facie consideration were held to be applicable to Delhi.

31. The learned Single Judge on the matter being remitted to him observed that these rules were made in the year 1942 by the High Court of Judicature at Lahore u/s 9 of the Suits Valuation Act, 1887, and have since been followed in the said High Court and in the successor High Courts, the East Punjab High Court, the Punjab High Court and in Courts in Delhi even after the constitution of the Delhi High Court. (See *Hans Raj Kalra v. Kishan Lal Kalra*, 2nd (1976) 2 Del 745

32. The learned counsel for the defendants strenuously contended that the learned Single Judge was doubtful about the applicability of these rules to the Delhi High Court. In support of his submission he drew my attention to the subsequent observation of - the learned Single Judge in his judgment 32-A. It is no doubt true that the learned Judge in a subsequent part of his judgment has observed that in relation to the reliefs of accounts, injunction and recovery of money court-fee the has to be paid ad valorem under appropriate sub-clause of clause (iv) of Section 7 of the Court-fees Act and that neither of the two suits under consideration could be said to belong to the category of suits which were exempt from the operation of Section 8 and that the value of the suits for purposes of jurisdiction in relation to these reliefs has to be the same as had been determined for the purposes of court-fees, unless there was - anything in the Rules of the Lahore High Court, if applicable, which provide to the contrary. The words "if applicable" used by the learned Single Judge do not lend support to the argument of the learned counsel for the defendant that the learned Single Judge was doubtful about the applicability of the rules made by the High. Court of Judicature at Lahore to the High Court of Delhi.

33. M. S. Joshi J. in *Manohar Lal Gupta v. State of Haryana*, (1977) 79 Pun Lr 181 has held that the rules framed u/s 9 of the Suits Valuation Act" by the High Court of Judicature at Lahore are applicable to suits filed in this Court because of Section 7 of the Delhi High Court Act. I am in respectful agreement with the view of my learned brother.

34. Besides the Division Bench judgment of this Court in *Radhey Shyam Sawhney and Others Vs. Bawa Joginder Singh Bhalla and Others*, is an authority in support of the proposition that all the rules and orders of the Punjab High Court which were applicable in the Union Territory of Delhi on the coming into existence of the Delhi High Court continue to operate by virtue of Section 7 of the Delhi High Court Act. Even on the assumption that rules made by the High Court of Judicature at Lahore -under. Section 9 of the Suits Valuation Act, 1887, are substantive law, the same remain operative in the Union Territory of Delhi as held by the Division Bench in the above-said case.

35. It may be noted here that the rules as framed by the High Court of Judicature at Lahore in respect of the manner of determining the value of suits for purposes specified in Section 9 of the Suits Valuation Act, 1887, have been embodied in Chapter III-C of the Rules and Orders (Vol. I) of the Punjab High Court and that-the said Rules and Orders -are applicable in the "union Territory of Delhi. That being so, the grievance sought to be made by the defendants is misconceived and untenable.

36. In this view of the matter I need not consider the submission sought to be raised on behalf of the plaintiff that there is no provision in the Civil P. C. to decide the contentions urged by the defendants through an interim application and that they ought to have filed the written statement. -

37. In view of my discussion on various points noted above the application (I. A. No. 1959, of 1978) fails and is hereby dismissed, leaving the parties to bear their respective costs.

38. Application dismissed.